

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 08, 2017

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES APPROVED: **Senator Hagedorn** moved to approve the minutes of March 1, 2017. **Senator Nye** seconded the motion. The motion passed by **voice vote**.

RS 25367 **Regarding designation of Police Officer Training and Standards as a criminal justice agency.** **Victor McCraw**, Division Administrator, Peace Officer Training and Standards (POST), explained that the purpose of this bill is to allow POST to have access to information from the Federal Bureau of Investigation (FBI) or the Criminal Justice Information System (CJIS). The duties of POST, by statute, are to make sure all applicants for peace officer certification in Idaho meet all requirements of the POST Council. One of those requirements is to be free of any disqualifying criminal history including certain misdemeanor convictions and all felony convictions. He asserted that this is POST's responsibility and the POST Council would like to be able to obtain that information rather than the hiring agencies.

MOTION: **Senator Lee** moved to send **RS 25367** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 25394 **Regarding enhancing hearing officer impartiality and due process.** **Senator Burgoyne** commented that much of **RS 25394** is changing Idaho Code section references. He advised that this legislation arose from the 2016 Administrator Hearing Officer Interim Committee which identified improvements to enhance hearing officer impartiality and due process. He reported that this legislation updates the Administrative Procedures Act; adopts portions of the Uniform Act on Administrative Procedures with modifications fitting Idaho's needs; and continues current exemptions for the Industrial Commission, Public Utilities Commission, and other agencies having their own alternative statutory hearing processes.

Senator Burgoyne detailed the following specifics of the legislation:

- Amending the definitions of "contested case" and "record", and specifying the requirements for the contested case record (pages 2, 3, and 9);
- Designating hearing officers as "presiding officers" and specifying their qualifications, and the grounds for their disqualification (pages 3, 5, and 11);
- Outlining hearing procedures including referring parties to mediation, conducting hearings by electronic means, and conducting hearings in open meeting;
- Giving agency heads legal, but not evidentiary, review of presiding officer decisions;
- Providing simple discovery tools and disqualification processes (pages 12-13);

- Providing standards and procedures for emergency hearings (pages 9, 10, and 13);
- Modifying the scope of judicial review, and providing limited de novo judicial review in cases of manifest injustice pages 17-20; and
- Providing for indexing and public availability of final orders and other documents.

MOTION:

Senator Lee moved to send **RS 25394** to print. **Senator Anthon** seconded the motion.

Senator Nye noted he may have a conflict of interest pursuant to Senate Rule 39(H).

The motion carried by **voice vote**.

S 1124

Regarding parents and guardians. **Robert Aldridge**, Trust & Estate Professionals of Idaho, explained that **S 1124** amends Idaho Code § 15-5-104, a statute written in 1991 to allow parents being deployed to Desert Storm to delegate their parental powers to someone else. The use of this delegation of powers has expanded, and it avoids formal court proceedings when there is no controversy. **Mr. Aldredge** indicated that members of the Guardianship and Conservatorship Committee have reviewed **S 1124** and he submitted their responses (attachment 1).

Mr. Aldridge indicated that this legislation would split the existing language, which currently provides only for an immediate delegation of powers, into two parts, by establishing a springing delegation. He explained that a springing delegation provides for the enactment of the delegation of powers to occur as the result of some event. He stated that the original language allowing a guardian to make a delegation was removed. He detailed the changes included in the proposed amendments.

Senator Anthon asked why the delegations of the powers of a guardian are being eliminated in regard to an incapacitated person. **Mr. Aldridge** replied that it is not appropriate for an individual who is subject to court monitoring to delegate that power to someone not reviewed by the court, including undergoing criminal background checks and training. **Senator Anthon** inquired if the new legislation allows for the delegation of powers of a guardian. **Mr. Aldridge** answered that it does not.

Senator Hagedorn asked for clarification regarding the use of the term "co-guardians". **Mr. Aldridge** answered that there are different types of guardians such as a court-appointed guardian, a natural guardian, a guardian ad litem, or a delegated guardian. He defined "guardian" as someone who protects. **Senator Hagedorn** cited page 3, line 20, "If a delegation of powers from parents are made to co-guardians" and asked if those co-guardians are precluded from delegating the powers as indicated in other sections. **Mr. Aldridge** responded that they are precluded, explaining that if a parent delegated powers to grandparents as co-guardians, who later did not want this responsibility, they could not delegate that position to someone else. The delegation would have to be made by the parent.

Senator Lee expressed concern about the springing aspect of this legislature. She commented that there is already a mechanism in law that this type of delegation can be made. She asked why this is needed. **Mr. Aldridge** stated that there is a difference in how delegation is handled between court appointed and non-court appointed guardians. He explained that work on legislation regarding minors is ongoing. He pointed out that children may be left with friends or relatives in the absence of parents, but they would have no authority regarding school and medical needs. The springing delegation allows for clear authority to act in an emergency. He explained that springing delegation is similar to immediate but depends on certain situations that may arise, and it names a specific person to act as guardian in those situations. **Senator Lee** shared concerns regarding the handling of a minor's funds. **Mr. Aldridge** responded that this bill is not a conservatorship; guardians cannot handle funds.

Senator Anthon inquired if this delegation would allow for a challenge by any other interested party, as might occur in the case of incarceration. **Mr. Aldridge** pointed out that the language specifies any interested person can start a formal proceeding under the probate code. In the case of incarceration this could be used. This springing delegation is used when there are no conflicts among interested parties. If there are conflicts, the decision will go to the courts.

Senator Burgoyne requested further information regarding funds being left for access by the guardian, and if the guardian has to have a conservatorship. **Mr. Aldridge** responded that a checking account can be set up with the guardian as a signer on the account. If there is a large amount of money involved, there would be a need for a conservator.

Senator Burgoyne expressed concern about some of the language dealing with a physician making the determination that a parent is not able to adequately care for the minor. He suggested that this language would need to be adjusted if problems arise.

MOTION:

Senator Anthon moved to hold **S 1124** in committee. **Senator Lee** seconded the motion.

Senator Anthon commented that he was not opposed to the bill, but he has serious concerns about medical doctors making determinations of legal capacity. He felt there needs to be language making clear that nothing in statute limits a judge's authority to make a determination as to legal capacity. **Senator Burgoyne** was also concerned regarding the physician issue.

**SUBSTITUTE
MOTION:**

Senator Hagedorn made a substitute motion to send **S 1124** to the 14th Order. **Senator Nye** seconded the motion.

Senator Hagedorn believed the bill to have merit, and it clarifies actions to be taken in unforeseeable situations. He felt the language could be revised to alleviate the concerns expressed.

The substitute motion passed by **voice vote**. **Senator Lee** and **Senator Anthon** requested to be recorded as voting no.

S 123

Regarding profiling. **Representative Anderst** declared that the motorcycle community has been subject to profiling stops for many years, and they have worked hard to bring this bill to the legislature. He pointed out that the bill: 1.) states that motorcycle profiling is prohibited for purposes of traffic stops, detention, or other actions; and 2.) defines motorcycle profiling as "the arbitrary use of the fact that a person rides a motorcycle or wears motorcycle related paraphernalia as a factor in deciding to stop and question, take enforcement action, arrest or search a person or vehicle." He emphasized that the goal is to ensure that law enforcement relies on conduct as the determination to initiate a stop. **Representative Anderst** described the diverse makeup of the motorcycle community, and discussed the importance of improving the relationship between cyclists and law enforcement.

TESTIMONY:

David Devereaux, Washington State Counsel of Clubs and National Counsel of Clubs, spoke in favor of **S 123**. He discussed the problems with motorcycle profiling around the nation. He shared instances of motorcycling (attachment 2) and laws passed in other states. He stated that the bill codifies important constitutional principles as well as reducing incidents of profiling, reducing liability issues, reducing financial strain on the victim, reducing incidents of civil liberty violations, and improving the relationship between the motorcycle community and law enforcement.

Jacob Kautz spoke in favor of **S 123**. He pointed out that he is an Idaho native, is a former United States Air Force staff sergeant, and is attending Boise State University (BSU). He detailed an incident that occurred on the BSU campus and continued into downtown Boise when he perceived that he was being profiled by a Boise City Police officer.

Senator Nye asked Mr. Kautz if he was trying to make a statement by wearing leathers. **Mr. Kautz** replied that leathers protect against cold weather and is a form of freedom of speech. He mentioned that wearing leathers lets others in the motorcycle community know who he is.

Representative Anderst reiterated that some language codification needs to take place to clarify this issue.

Senator Foreman referred to his background in the United States Airforce, as a combat veteran, his service in law enforcement, and as a member of the motorcycle committee. He maintained that POST teaches its people to make stops based on reasonable suspicion, not appearance, and he emphasized that law enforcement management would not tolerate profiling. **Senator Foreman** asserted that, although there are isolated instances, there is not a systemic problem and pointed out that it is unnecessary to add laws that say to do what other laws already require.

Representative Anderst responded that the motorcycle community was not implying that all police officers profile, but the practice does exist. He reiterated that they want clarified in statute that profiling would be considered a prohibited activity.

Senator Foreman inquired if the victims of this practice have notified the officers' superiors and file complaints. **Representative Anderst** stated that some have used the chain of command but have not been successful in reducing the incidents of profiling.

Senator Burgoyne asked whether the extent of profiling has been quantified in our State. **Representative Anderst** commented that he does not have that information, but that it is available. Mr. Devereaux distributed a hand out to the Committee (attachment 2). **Senator Burgoyne** commented that the information is a list of incidents that have occurred. **Senator Burgoyne** commented that profiling is wrong, but does exist. He pointed out that there is a mechanism in place for victims to sue the government and those who violate their civil rights. His concern was that this law will give rise to similar legislation from every group that feels it is being profiled. He suggested that if we write such a law, it should apply to everyone.

Senator Hagedorn asked if the Council of Clubs followed up with law enforcement in the incidents listed in attachment 2. **Mr. Devereaux** explained in most cases when there is follow-up, the victim has to go to court, and even when found innocent it is costly to the victim. Complaints have been filed and law enforcement has met with the victims and their counsels, but incidents of profiling have not been reduced.

Senator Lee asked what corresponding actions the motorcycle community would bring to improve the relationship with law enforcement. **Representative Anderst** stated that the motorcycle community is willing to work with law enforcement, and that this legislation is a step.

MOTION: **Senator Foreman** moved to hold **H 123** in committee. The motion failed for lack of a second.

MOTION: **Senator Burgoyne** moved to send **H 123** to the 14th Order for possible amendment. The motion failed for lack of a second.

MOTION: **Senator Lee** moved to send **H 123** to the floor with a **do pass** recommendation. **Senator Agenbroad** seconded the motion.

Senator Agenbroad noted that he rides a Harley and, while not being profiled himself, he has witnessed profiling. He stated that he supports law enforcement, but will be supporting this bill.

Senator Burgoyne commented that he will not support the motion. He believes there are some issues but a bill could have been written that would apply to everyone.

The motion passed by **voice vote**. **Senator Foreman** and **Senator Burgoyne** requested to be recorded as voting no.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 3:00 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary